In The
Supreme Court of Mayflower

No. 01-12

CASHMONEY383838,

Petitioner,

v.

COMBATROLE ; OOFISER

Respondent.

Appeal from the Mayflower District Court
for the District of Clark County

Before TURNTABLE, *Chief Justice*, TOTORO, STICKZA, CLARKE, CABOT, XIQAQ, KHALED, MANDATORY, and NOTABLE, *Associate Justices.*

KHALED, J., delivered the opinion of the Court. STICKZA J., filed a dissenting opinion in which NOTABLE J., joined.

On November 3, 2024, Petitioner CashMoney383838, a resident of Clark County, Mayflower, was on a road trip passing through the village of Mersea when Officer Combatrole of the Mersea Police Department, engaged in a high-speed pursuit, collided with the Petitioner's sedan. The fleeing suspect, too, was hit and sent flying into the air, and the Petitioner was left disoriented, shaken, and in fear for his life. Officer Combatrole exited his cruiser, wielding a Highland baton, and vandalized the Petitioner's vehicle, shattering multiple windows and damaging the vehicle's exterior. The Petitioner was then handcuffed by the officer and, later, released without charges.

Petitioner subsequently filed suit against Officer Combatrole under 42 U.S. Code §1983 for excessive use of force, false detention, and depriving him of his property without due process under the

Fourth and Fourteenth Amendments to the U.S. Constitution. Petitioner likewise sued Officer Oofiser for failure to intervene, invoking the same constitutional provisions.

The District Court dismissed *sua sponte* for want of jurisdiction. In its order, the court reasons that 42 U.S. Code §1983 does not provide a basis for tort liability because "the laws of the Union of Columbia shall not be enforced by the State, unless such laws have been codified by the Legislature." *See CashMoney3838 v. Combatrole, et al.*, CV-0061-24 (D.C.C. 2024) (citing MF. CONST. art. I, §11). The matter is now before us on appeal by CashMoney3838.

I

"Beginning in Colonial days, when the settlers of our Atlantic seaboard brought with them the legal system to which they were accustomed, they, in great part, retained only such rules and customs as were adapted to their social conditions and physical environment and discarded that which was in-applicable." Frederick G. McKean Jr., *A Useful Maxim*, 4 N.C. L. Rev. 118 (1926) (McKean). Thus, the common-law presumption that the services of a physician are honorary and gratuitous was "never adopted by them," the ancient Saxon practice of holding sales in market overt conclusive upon the title to personality "never existed in any of the states," and the doctrine of ancient lights was also "never imported into what is now the United States, for numerous sky-scrapers are visible evidence of this." *Id.* The change of sovereignty affected by the Revolutionary war, therefore, effected a change of all the "political and other laws which thereby became incompatible." *Id.*

The reasons behind these laws ceased with the circumstances of the Nation, and, as a consequence, the laws themselves ceased. See McKean, at 119 ("*Cessante ratione legis, cessat ipsa lex.*"). Similarly, when the State of Mayflower was established in the year 1620—"whereby the Township of Plymouth, City of Lander, and territory of Medford now lay"—they, too, retained, in great part, only such laws as they deemed appropriate. MF. CONST. art. II, pmbl. As a result, while our Framers adopted the common law of England, *see, e.g.,* MF. CONST. art. I, §§7, 9, and adopted, in part, the Federal

Constitution, MF. CONST. art I, pmbl., they also made a conscious choice to omit Federal statutory law. *See* MF. CONST. art I, §11 ("The laws of the Union of Columbia shall not be enforced by the State, unless such laws have been codified by the Legislature.") My brother STICKZA contends that the Framers, simply, had no power to do so. In support he cites the Supremacy Clause of the Federal Constitution: "This Constitution, and the Laws of the United States shall be the supreme Law of the land and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art VI, cl. 2.

This argument is without merit. When the State of Mayflower joined the Federal Union 156 years after its initial founding, MF. CONST. art I, §11, it expressly provided that "the laws of the Union of Columbia *[or United States of America]* shall not be enforced by the State, unless such laws have been codified by the Legislature." *Id.* And this cannot be said to conflict with the Supremacy Clause or the State's allegiance to the Federal Union; for when the State joined the Union it only "***in part,*** accept[ed] and recognize[d] our Federal Constitution." MF. CONST. art I, pmbl. Like our sister state Ridgeway, our Constitution only incorporates certain Federal rights and liberties and omits others. See, e.g., *State v. Lxnias*, 1 Rid., at 502 (2022) (JACKSON, J., concurring) Thus, a person may allege and bring a claim founded in the Federal Constitution; but our courts are without jurisdiction to consider claims founded in Federal statutory law.

Admittedly, this may prove paradoxical, but "[i]f the authors of these guarantees, fully aware of the potential conflicts between them, were unwilling to resolve the issue by assigning to one priority over the other, it is not for us to rewrite the Constitution by undertaking what they declined to do." *See Nebraska Press Assn. v. Stuart,* 427 U.S. 539, 561 (1976). Our Framers expressly declined to adopt Federal laws into our jurisprudence. Now, 248 years later, we are bound to honor their choice. To do otherwise would not merely trespass upon the prerogatives of our Framers; it would undermine the foundational principle of sovereignty that has guided our state since its inception. The rule was stated by James Madison:

> "Were the people regarded in this transaction as forming one nation, the will of the majority of the whole people of the United States would bind the minority, in the same manner as the majority in each State must bind the minority; and the will of the majority must be determined either by a comparison of the individual votes, or by considering the will of the majority of the States as evidence of the will of a majority of the people of the United States. Neither of these rules have been adopted. Each State, in ratifying the Constitution, is considered as a sovereign body, independent of all others, and only to be bound by its own voluntary act."

(citing The *Federalist* No. 39, at 241 (James Madison) (Jacob E. Cooke ed., 1961))

The State of Mayflower cannot be bound by Federal law except by its own assent. And this assent having been declined by the Framers in the very text of the Mayflower Constitution, this Court is without power to declare it retroactively. I recount the address of Professor Brenda Popplewell before the Ridgeway Superior Court: The role of the courts is *'jus dicere*' and not *'jus dare'* – to state the law, and not to make or give it. See Henry G. Bohn, *The Moral and Historical Works of Lord Bacon,* at 146 (1852). "[E]lse" wrote Sir Francis Bacon "will it be like the authority claimed by the Church of Rome, which, under pretext of exposition of scripture, adds and alters, and pronounces that which they do not find, and by show of antiquity introduces novelty." *Id.,* (cleaned up).

The issue is further confounded by the fact that State law already furnishes an adequate remedy. 5 MSC 1 §3101.5 provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, subjects, or causes to be subjected, any citizen of the State of Mayflower or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable for deprivation of rights to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

5 MSC 1 §3101.5 (cleaned up).

§3101.5 is duplicate §1983. However, §3101.5 is far preferable when bringing a suit against State officials. While §1983 does not waive State sovereign immunity under the Eleventh Amendment, *e.g., Alden v. Maine*, 527 U.S. 706, 736 (1999) ("42 U.S.C. § 1983 did not create a cause of action against the States"), §3101.5, by contrast, subjects the State to liability in the same fashion that §1983 would subject the Federal government to liability. Not to mention that two additional State law claims, 5 MSC 1 §3212.1 and 5 MSC 1 §3212.3, also provide an explicit cause of action against the State.

It is unclear why Petitioner elected to bring his claim under §1983 and overcome the hurdle of qualified immunity or invoke some *Ex parte Young* exception when State law claims waiving sovereign immunity were at his disposal. We cannot but imagine that Petitioner wished to circumvent mandatory arbitration or other State requirements in bringing his claim—or perhaps, this was a matter of principle. Nonetheless, the power to rewrite the Constitution properly rests in the hands of the people, and not in the judiciary. *See Ex parte James,* 836 So. 2d 813, 829 (Ala. 2002) (HOUSTON, J., concurring). "It is of this power" that the plaintiff in this case, in my opinion, "should have availed themsel[f]." *Ibid.*

* * * *

While the argument raised by Petitioner is accompanied by authority of great weight, we may exercise "neither force nor will but merely judgement." The *Federalist* No. 78, p. 456 (C. Rossiter ed. 1961) (A. Hamilton); *see also Obergefell v. Hodges*, 576 U.S. 664 (2015) (slip op. at 2) (ROBERTS, C.J., dissenting) ("Judges have the power to say what the law is, not what it should be.") Our Constitution speaks in no ambiguous terms. Federal statutes unincorporated by our Senate are beyond judicial notice. AFFIRMED.

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STICKZA J., dissenting, joined by NOTABLE J.

When bands of farmers and merchants behind the frontlines of the Revolutionary War had used up their remaining stores of powder and shot and retired their worn muskets, a new task—indeed a demanding task—laid ahead: forming a system to govern the infant nation. The first system was created under the Articles of Confederation, but it proved to be too weak. Congress was the only branch, and the thirteen states were not bound to its demands. There was no executive branch to implement laws and no courts to interpret them. So, as far as the states were concerned, any laws passed by the Confederation Congress were mere dead letters.

But in the summer of 1786, that attitude changed. High taxes had wedged Massachusetts farmers between foreclosure of their farms and mounting debts. Hundreds of local farmers took up arms and

seized courthouses to delay foreclosure proceedings. But when Massachusetts turned to Congress for help to quell the rebellion, there was simply nothing that could be done: Congress had no money, and it could not raise an army under the Articles of Confederation. On a hope and a prayer—and with some assistance from the other states—the insurrection was stamped out, and Massachusetts was returned to order. Congress, however, was in dismay.

If the nation had struggled to quell a domestic quarrel, then there is no doubt that it would struggle—if not completely fail—to defend itself from foreign superpowers. Adding to the prospect of a full-blown attack, there was concern that a weak federal government with even *weaker laws* would quickly fade out, and that as a result, the states would become independent of each other. To confront those threats, each state sent delegates (no doubt with a few extra pairs of breeches) to convene at a private hall in Philadelphia to discuss potential revisions to the *existing* Articles of Confederation. For four months, sweat-drenched delegates convened in a boarded-up room and tensely debated the proper form of government. Some of them left after finding out that, after a few weeks into the convention, the Articles were being replaced by an entirely new document.

There were many debates in the shuttered room of Independence Hall, but there is only one that is relevant to this case: the Large State Plan versus the Small State Plan. Coming from Virginia, the Large State plan proposed an array of solutions, including a bicameral legislature; a federal executive *chosen* by Congress; and, as relevant here, legislative power to "to legislate in all cases to which the separate states are incompetent." Yates, *Secret Debates*, pp. 209-212. But the small state of New Jersey slightly disagreed, countering the Large State Plan with a unique spin: federal law would be supreme to the states, "so far forth as those Acts or Treaties shall relate to the said States or their Citizens." See *Id.* at pp. 129-137. That provision was passed but later tweaked to broaden its reach. After all, "*[a]nything*…that shall be enacted by Congress contrary [to its laws or the Constitution], will not have the force of law" James Wilson, *Pennsylvania Ratifying Convention*, vol. 4, p. 228.

That was over two hundred years ago. But, somehow, we have circled back to the same contentious debates as our founding fathers. And while the windows of our chambers are not shuttered by planks of wood—and, thankfully, we do not have to wear tight breeches—the majority makes a remarkable move to shimmy our system of laws away from federal accountability. And while our decisions will invariably honor federal precedent, the majority has foreclosed the possibility of raising federal claims (including constitutional challenges) in our state courts—even when they undoubtedly should.

James Wilson is surely rolling in his grave.

I

The majority dedicates much of its opinion to the history of the United States—quoting the 1787 Convention, discussing the nature of laws in the sixteenth-century British colonies, and even citing our own constitutional framework. I, too, have discussed that history—the *actual* history—in my dissent. But with that out of the way, I will turn to the merits of this case and address the unique nature of 42 U.S. Code § 1983 claims and its applicability in our state courts.

A

The Ku Klux Klan and Southern Courts. Section 1983 was enacted "to provide compensatory relief to those deprived of their federal rights by state actors," *Felder* v. *Casey*, 487 U.S. 131, 141 (1988), "notwithstanding any provision of state law to the contrary," *Patsy* v. *Bd. of Regents*, 457 U.S. 496, 504 (1982). In the antebellum South, racist groups like the Klu Klux Klan were the norm, and chances were good that you would stumble across them (a lot). But racial discrimination was more than an abstraction; it was a reality. Southern states selectively enforced laws that were meant to *protect* individual rights and, in doing so, obstructed African Americans from recovering damages in state court. In 1871, Republican Congressman Shellabarger introduced the Ku Klux Klan Act, which, in relevant part, is codified at 42 U.S. Code § 1983.

The House floor was as hot as Mississippi summer. One Southern Democrat furiously hammered the Act, noting that "jurisdiction

to determine the individual rights of citizens of the same State…belongs only to the State tribunals." CONG. GLOBE, 42d Cong., 1st Sess. 331 (1871) (statement of Rep. McHenry (D-KY). House Republicans, however, held a different view: Southern courts were plagued by racist judges and racist jurors. Juries were invariably packed with people from the "neighborhood," who were "[un]able to rise above prejudices or bad passions or terror." *Id*. at 460 (statement of Rep. Coburn (R-IN). Law enforcement also proved to be an issue, because "[t]he Klans [we]re powerful enough to defy the State authorities." *Id*. at 72 (statement of Rep. Blair (R-MI). And in most cases, "*they were* the authorities." *Ibid*.

Federal courts, on the other hand, "were seen by Republicans as superior in carrying out the ordinary course of justice." Tyler Lindley, "ANACHRONISTIC READINGS OF SECTION 1983" Al. L. Rev. 897, 935 (2024). They were far away from local mobs, and they had "the aid of the [Federal] Government." CONG GLOBE, at 460 (statement of Rep. Coburn (R-IN). And there was little debate about the effectiveness of state law itself; instead; Republicans were concerned about the *enforcement* (or lack thereof) of those laws. *See* Al. L. Rev. at 935. Even though Section 1983 was passed with the goal of providing Black litigants with an impartial forum to pursue monetary damages against state actors, there is no evidence that Congress has exclusively reserved those claims for adjudication in federal court; in fact, there is a wealth of evidence to the contrary.

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exclusively reserved those claims for adjudication in federal court; in fact, there is a wealth of evidence to the contrary.

Congress and Supreme Lawmaking. The Supreme Court has barely nipped the question of applicability of Section 1983 claims in state courts, but it has said enough to conclude that state courts have "to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress." *Second Employers' Liability Cases*, 223 U.S. 1, 57 (1912). Merely because an act of Congress does not 'mix well' with state policy is not enough of an excuse to deny federal claims, because "[w]hen Congress…adopted that act, it spoke for all the people and all the states, and thereby established a policy for all." *Claflin* v. *Houseman*, 93 U. S. 130, 136-137 (1876). Federal policy is "is as much the policy of [Mayflower] as if the act had emanated from its own legislature," and it should "be respected accordingly in the courts of the state." *Id.* But the majority departs from this accepted understanding for the sake of folktale—to preserve an unnatural story about Mayflower and its Constitution.[1]

I will concede that state courts are not required to entertain *all* federal claims—only those that Congress has vested in the jurisdiction of the state courts. Indeed, "Congress frequently has exercised the power to confer exclusive jurisdiction upon federal courts." Kenneth Wilbur, "Concurrent Jurisdiction and Attorney's Fees." U. Pa. L. Rev. 134, 1207; see, *e.g.*, L. Loss, FUNDAMENTALS OF SECURITIES REGULATION 1016 & n.4 (1983) (Claims arising under the Securities Exchange Act provides exclusive jurisdiction in federal courts). However, "absent a finding of congressional intent to prevent state courts from hearing a federally created claim, state courts

[1] The majority cuts corners in its opinion; it argues that when Mayflower "joined the *Federal Union*" 156 years ago, it chalked up some ground rules: First, that "the laws of the Union of Columbia shall not be enforced by the State, unless such laws have been codified by the Legislature," MAYF. CONST. art I, §11; Second, that the Union only partially "accept[ed] and recognize[d] our Federal Constitution." MAYF. CONST. art I, pmbl. Those rules neatly tee up the basis of my dissent: If the Union of Columbia is a sovereign entity of the United States, then the laws of the Union are different from those of the federal government. As such, federal laws are not subject to the §11 codification requirement. And the mere fact that the Union has "accepted" the Federal Constitution is enough to support my understanding that the Supremacy Clause applies to Mayflower.

have concurrent jurisdiction over the federal claim." *Id.* Section 1983 contains no such provision. And the relevant jurisdictional statute only provides that federal courts have *original* jurisdiction over Section 1983 claims, but not exclusive jurisdiction. See 28 U.S.C. § 1343(a)(3). Challenges came and went, but in 1980, the Supreme Court settled this jurisdictional dispute once and for all: "While [we] reserve[ed] the question whether state courts are obligated to entertain § 1983 actions, we held that Congress has not barred them from doing so." *Maine* v. *Thiboutot*, 448 U.S. 1, 3 n.1 (1980); see also *Martinez* v. *California*, 444 U. S. 277, 283-284, n. 7 (1980).

But the language of Congress is not our only source of concurrent jurisdiction. So is the Constitution. Justice Joseph Bradley probably put it best: "Legal or equitable rights... may be enforced in any court of either sovereignty competent to hear and determine such kind of rights…" *Claflin*, 93 U.S. at 136. Indeed, "[t]he fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief," because, under the Constitution, it "is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize State laws." *Id.* And as I have discussed at length, "Congress may, if it see fit, give to the federal courts exclusive jurisdiction [over its laws]." *Id.* In the real world, federal law is thus supreme to state law. But in Mayflower, where Congress does not exist, and where the Constitution is cut off at a certain page, that is seemingly not the case.

* * * *

Mayflower is not a fairytale land where the State replaces the federal government. The Framers recognized as much when they acknowledged that the laws of the United States and its Constitution apply to our state courts. And because Congress has used its *supreme* lawmaking powers to give state courts concurrent jurisdiction over Section 1983 claims, Mayflower *is* a state, and it is not sovereign from the federal government. I *dissent* from the contrary opinion.